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University of Oregon and Hal Sadofsky

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Portland

JENNIFER JOY FREYD,

CV. 6:17-cv-448-MC

Plaintiff,

v.

UNIVERSITY OF OREGON, MICHAEL H.
SCHILL and HAL SADOFSKY,

Defendants.

**DECLARATION OF DAVID
CONOVER IN SUPPORT OF
DEFENDANTS UNIVERSITY OF
OREGON'S AND SADOFSKY'S
MOTION FOR SUMMARY
JUDGMENT**

I, David Conover, declare as follows:

1. I am the Vice President for Research and Innovation at the University of Oregon. I oversee the University's entire research enterprise and work to enhance research excellence, strengthen the role of research, scholarship, and creative activity across the University, and work alongside the President and Senior Vice President and Provost to strengthen existing academic research programs and develop new partnerships and collaborations. As a strategic goal, the University seeks to become and maintain status as a key contributor to the cultural, scientific, and economic development of the state, nation, and world. As the chief research officer, I oversee the

majority of the University's multi-disciplinary research centers and institutes, strategic research initiatives and partnerships, research infrastructure and administration, compliance and regulatory environment, innovation and commercialization efforts, and I work with the donor community to support research initiatives.

2. My professional history and qualifications are summarized in the curriculum vitae attached hereto as Exhibit A. I have particular experience in the area of federal grant funding because for a period of three years I served as the Director of the Division of Ocean Sciences at the National Science Foundation where I managed an annual budget in excess of \$350 million representing the financial support for basic research in ocean science.

3. The work that goes into administering and managing a funded research grant is critical to the success of the grant work but also consumes considerable time, effort, and energy. Recent studies by the Federal Demonstration Partnership (FDP), a cooperative initiative among 10 federal agencies and a number of institutional recipients of federal funds, show that administrative tasks and responsibilities related to federally sponsored research consume an average of 42% of a principal investigator's time. My own observation is that estimate is generally accurate for funded researchers across the University of Oregon, and that greater grant activity imposes a commensurately greater number of responsibilities and occupies a commensurately greater amount of time and effort.

4. Administrative tasks associated with grants include:
- a. Writing the proposal;
 - b. Certifying the accuracy and originality of a proposal; – May Not Be Delegated;
 - c. Creating and accurately completing an E-PCS record for each proposal;
 - d. Obtaining appropriate institutional reviews and approvals electronically via the E-PCS record;

- e. Performing and monitoring work performed, including oversight on any sub-agreements;
- f. Complying with University policies on misconduct in research, conflict of interest, drug-free workplace, lobbying, etc.; - May Not Be Delegated;
- g. Complying with grant terms and conditions, as well as agency rules and regulations governing the award and institution; May Not Be Delegated;
- h. Complying with federal, state, and University policies and regulations governing human subjects, animals, DNA, hazardous materials, and other regulatory areas;
- i. Hiring and supervising project staff;
- j. Ensuring staff do not exceed 1.0 FTE for all activities combined within the institution, certifying level of effort by personnel working on the project; - May Not Be Delegated;
- k. Fiscal monitoring and financial accountability, including monthly review and reconciliation of account activity; and
- l. Preparing and submitting all required reports, including interim and final technical, financial, equipment, and invention reports.

5. There are additional duties related to sponsored grants that rest with the department heads (in the case of Psychology this would be Ulrich Mayr) and directors of institutes and centers. Specifically they are responsible to review and endorse proposals from faculty, staff, and students under their purview and provide an administrative endorsement verifying that due consideration has been given to the project and that it meets University and sponsor requirements for:

- a. Principal investigator's (PI) qualifications to direct the project;
- b. The substance and merit of the proposed activity including academic appropriateness and desirability;

- c. Commitments of faculty and staff effort, and the possible effects of such commitments on the teaching and other obligations of the personnel involved (additional department heads or deans may need to review if PI and Co-Is are from different units);
- d. Salary arrangements (rate, annual increases, overall Full Time Equivalent (FTE) must not exceed 1.0 for all activities, summer support, partial or full academic year salary, course release);
- e. Requirements for equipment, facilities, space, and administrative support;
- f. Compliance with federal, state, and University policies and regulations including human subjects, animals, DNA, hazardous materials, conflict of interest, lobbying, etc.; and
- g. Budget, cost sharing, and matching funds are approved and documented in E-PCS record.

6. There are various ways in which PIs and the University are held accountable if grants, particularly federally funded grants, are not administered properly. For example, principal investigators for federally funded grants must complete a payroll certification for salaried employees being charged to their grant. The payroll certification states that:

“I hereby certify that to the best of my knowledge, the amount of salary allocated for each individual listed is accurate and allowable for this project during this time period. I further understand that, as the PI, I may not knowingly make any false statements or claims (18 USC 1001).”

In addition, many sponsors of funded research have very specific requirements. For example, the National Institutes of Health has a detailed public access policy regarding the availability of results that emerge from funded research. A summary and link to the full text of the policy can be found on the University Libraries website. NSF recently instituted a policy requiring that grantee institutions report to the agency any findings or determinations that an NSF-funded principal investigator or co-principal investigator (a) committed harassment, including sexual harassment

or sexual assault; or (b) was placed on administrative leave, or had imposed on them any administrative action relating to a harassment or sexual assault finding or investigation.

7. Federal law includes whistleblower protection responsibilities for grant recipients. At the proposal stage, principal investigators are sent a notification of whistleblower protections for federally funded projects which clearly states that an “employee of a contractor, subcontractor, grantee [or sub-grantee] may not be discharged, demoted, or otherwise discriminated against as a reprisal for whistleblowing” and that they are required to:

“1. Inform their employees working on any federal award that they are subject to the whistleblower rights and remedies; and 2. Inform their employees in writing of employee whistleblower protections in the predominant native language of the workforce.”

This information is also provided on the SPS website, the University policy website, and the University internal audit website.

8. The principal investigator of a grant is directly responsible not only for the management and administration of a sponsored project within the administrative constraints imposed by the sponsor, but also in accordance with University policy. The PI authorizes all direct cost expenditures of project funds and is responsible for reviewing and approving project-related expenditures and cost transfers.

9. Federal funding priorities change from time-to-time. When that happens it is not uncommon for a member of the faculty to be unable to find funding for a specific research project. In such cases, faculty either adjust their work and make efforts to locate related or other available funding, or postpone the research, or sometimes seek private or other funds. This is an issue that affects most faculty from time-to-time.

10. Grants are generally highly competitive. My observation is that on average a researcher might receive or be awarded one grant for every 5-10 applications submitted. Accordingly, even though the application process is time consuming and work intensive, it is

important to submit applications on a regular basis in order to maximize the possibility of obtaining funding.

11. The principal investigator, as part of his/her grant administration responsibilities, must usually provide performance and technical reporting to the sponsor.

- a. The main product of most University research is a written report or series of reports, and principal investigators (PIs) should ensure that reports are completed and submitted in a timely manner. Typically, sponsors require annual progress and final reports. It is the responsibility of the PI to know sponsor requirements for performance reporting.
- b. Reports should be prepared according to the instructions provided by the sponsor. If no specific format is provided, the PI should, at a minimum, provide a statement of progress in achieving the stated goals and a list of results (both positive and negative).
- c. The three most common performance reporting problems are late submission, lack of completeness, and inaccuracy. If delays beyond your control prevent a timely report, the sponsor should be notified and an extension requested. A copy of the final technical report should be submitted to SPS and a copy maintained by the unit as per University record retention policy.
- d. Delinquent reports may cause a sponsor to:
 - Postpone action on further awards, continuations or extensions until all reports are received. (This action is usually directed at individual investigators, but also may be directed at the institution as a whole),
 - Withhold payment of invoices, and
 - Suspend the award.

12. Both the University and the project sponsors require detailed financial reporting.

- a. The specific requirements and due dates for financial reporting will vary by sponsor. Federal awards generally require that final financial reports be

submitted within 90-120 days of project completion. Certain awards, such as those where the University is a sub-recipient to a federal award may impose even shorter reporting periods to allow the prime awardee to get their report submitted within the required timeline.


- b. Sponsoring agencies and auditors are increasing their monitoring of recipients for compliance with both program and financial reporting requirements. Along with the increased emphasis on timeliness of report submission, sponsors are often unwilling to accept “revised” final reports. Requests to submit revised final reports reflect poorly on the institution as well as the PI; it is viewed as an indication that project management is less than adequate. Consequently, it is extremely important that PI and their units ensure that all project charges are complete and accurate at the time a project ends.
- c. If it is discovered during the completion of the final financial report that unallowable or unallocable costs were applied to the grant, those costs must be immediately removed from the grant by the PI and unit. If the inappropriate charges were discovered after the financial report was submitted, the costs must be removed from the grant at the time of discovery and a revised financial report must be submitted to the sponsor.

13. There is a wide variation in grant activity among the faculty. Records for Office for Research and Innovation, which tracks external sponsored research funding, show that within the Department of Psychology, some faculty have been very active in submitting proposals and obtaining funding. Others have been less active, presumably devoting their efforts to other parts of their work. During the time period beginning in fiscal year 2008 and ending year in fiscal 2018, for example, Helen Neville submitted 32 proposals, and was awarded eight for a total funding amount of \$14,133,195. Phil Fisher submitted 73 proposals and was awarded 34 for a total funding

amount of \$12,359,571. Jennifer Pfeiffer submitted 29 proposals and was awarded four for a total funding amount of \$2,890,918. Ulrich Mayr submitted 22 proposals and received eight awards for a total funding amount of \$2,710,306. Gordon Hall submitted six proposals and was selected as co-investigator on a \$4,297,369 grant, with the University of Oregon receiving \$429,796. Nicholas Allen submitted 18 proposals and was awarded two, for a total funding amount of \$786,109. Jennifer Freyd submitted eight proposals and was awarded one, for a total of \$25,500.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed, on Nov 9, 2018.



David Conover

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of November, 2018, I served the foregoing
**DECLARATION OF DAVID CONOVER IN SUPPORT OF DEFENDANTS
UNIVERSITY OF OREGON AND SADOFSKY'S MOTION FOR SUMMARY
JUDGMENT** on the following parties at the following addresses:

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by the following indicated method or methods set forth below:

- ☒ **Electronic Filing using the Court's ECF System**
- ☐ **First-class mail, postage prepaid**
- ☐ **Hand-delivery**
- ☐ **Overnight courier, delivery prepaid**
- ☐ **E-mail**

s/Paula A. Barran

Paula A. Barran
Shayda Zaerpoor Le